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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DZ Reserve and Cain Maxwell (d/b/a Max
Martialis), *individually and on behalf of
others similarly situated*,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:18-cv-04978-JD

**PLAINTIFFS' MOTION *IN LIMINE* NO.
1 TO PRECLUDE REMARKS
CONCERNING UNRESOLVED
DISPUTES PRIOR TO THE COURT'S
DISPOSITION**

Hon. James Donato

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that after the conclusion of all briefing and on September 18, 2025 at 1:30 p.m. in Courtroom 11 in the United States District Court for the Northern District of California, on the 19th floor of 450 Golden Gate Avenue, San Francisco, California 94102, before the Honorable James Donato, Plaintiffs will move the Court for an order precluding any remarks concerning unresolved disputes regarding Plaintiffs' claims and burden of proof prior to the Court's disposition of those disputes.

This Motion is based on this Notice of Motion, Memorandum of Points and Authorities, and all matters with respect to which this Court may take judicial notice, and such oral and documentary evidence as may be presented to the Court at the time of or before the hearing.

1 Plaintiffs move for an order precluding any remarks concerning unresolved disputes
2 regarding Plaintiffs' claims or burden of proof prior to the Court's disposition of those disputes.
3 Any such statements are prejudicial and likely to cause jury confusion, and, therefore, excludable
4 under Federal Rules of Evidence 401, 402, and 403.

5 This issue is urgent in light of Meta's separately filed motion in limine seeking to rewrite
6 Plaintiffs' theory of liability and thereby eliminate much of their case on the ground that the Ninth
7 Circuit's opinion affirming this Court's Rule 23(b)(3) class certification order actually overturned
8 much of the order. According to Meta, the Ninth Circuit, in affirming this Court's Order,
9 eliminated any allegation regarding inflated Potential Reach, even though the Court's Order
10 explained: "[t]he gravamen of the lawsuit is that Meta inflated its potential advertising reach to
11 consumers, and charged artificially high premiums for ad placements." ECF No. 388 at 1.

12 Any statements made to the jury regarding this dispute, prior to the Court's resolution of
13 the issue, would be deeply prejudicial and improper. Federal Rule of Evidence 403 provides for
14 exclusion of evidence or statements that may create confusion as to what a plaintiff must show to
15 prove their claims. *Nat'l Prods., Inc. v. Arkon Res., Inc.*, 2019 WL 12536044, at *8 (C.D.Cal. Mar.
16 25, 2019) (excluding evidence and argument due to the "potential for jury confusion, including
17 jury confusion about what is required to show willful patent infringement"); *see Idaho Golf*
18 *Partners, Inc. v. TimberStone Mgmt., LLC*, 2016 WL 5340302, at *3 (D. Idaho Sept. 21, 2016)
19 (excluding evidence where its presentation may "confuse the jury" as to "what legal standards
20 apply").

21 Courts address such serious risks of jury confusion using their discretionary authority to
22 issue orders excluding irrelevant matters from opening statements. *See U.S. v. Palumbo*, 2010 WL
23 4683539, at *2 (D. Mont. Nov. 12, 2010) (citing *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1115
24 (9th Cir. 2005)). Opening statements are meant to outline "what evidence will be presented, to
25 make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and
26 testimony to the whole." *U. S. v. Dinitz*, 424 U.S. 600, 612 (1976) (Burger, J., concurring). "[I]t is
27 not an occasion for argument." *Id.*

1 With this motion, Plaintiffs do not seek a particular ruling on Meta’s argument referenced
 2 above, or any other argument that might be advanced by the parties. Rather, Plaintiffs seek a clear
 3 order precluding the parties from “jumping the gun” by advancing an argument that improperly
 4 presumes a favorable—future—ruling from the Court. An order with clear instruction on this issue
 5 will also prevent jury confusion and prejudice and promote efficiency by obviating the need to
 6 correct the record after the fact.

7
 8 Dated: August 21, 2025

Respectfully Submitted,

9 By /s/ Geoffrey Graber

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DZ RESERVE and CAIN MAXWELL (d/b/a
MAX MARTIALIS), individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant

CASE NO. 3:18-cv-04978-JD

**META PLATFORMS, INC.'S OPPOSITION
TO PLAINTIFFS' MOTION
IN LIMINE NO. 1 TO PRECLUDE
REMARKS CONCERNING UNRESOLVED
DISPUTES PRIOR TO THE COURT'S
DISPOSITION**

Date: September 18, 2025
Time: 1:30 p.m.
Courtroom: Courtroom 11, 19th Floor
Judge: Hon. James Donato

1 Plaintiffs seek to preclude Meta from making “any remarks concerning unresolved disputes
2 regarding Plaintiffs’ claims or burden of proof”—including opening statements addressing what
3 evidence Plaintiffs must present to prove their case on a classwide basis. Plfs’ MIL 1 at 1. That
4 request lacks any valid basis, especially given that Plaintiffs focus on a dispute that this Court and
5 the Ninth Circuit already resolved. The MIL should be denied.

6 Plaintiffs are wrong to assert that the Court should prohibit Meta from arguing to the jury
7 that Plaintiffs cannot prove their case by pointing solely to inflation in Potential Reach estimates.
8 As Meta explained in its Motion in Limine No. 3, Plaintiffs have long presented two “independent”
9 theories of misrepresentation—one based on alleged inflation in the numerical estimates and one
10 based on the use of the descriptor “people” instead of accounts. Dkt. 281-3 (Plfs Class Cert. Mot.)
11 at 12. Only the second was accepted for class treatment: the Ninth Circuit specifically rejected the
12 notion that the relevant common misrepresentation was “the numerical discrepancy between
13 people and accounts,” holding instead that the misrepresentation was “the fact that Meta
14 substituted people for accounts.” *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1234-35 (9th
15 Cir. 2024).

16 In doing so, the Ninth Circuit explained that this alleged misrepresentation was the one this
17 Court “described in its certification order: ‘[T]he ability of Potential Reach to reach “people,”
18 namely unique individuals’ when the metric was ‘actually ... an estimate of “accounts” reached.’”
19 *Id.* at 1234 (quoting Class Cert. Order (Dkt. 388) at 10). As this Court stated, the “people” label
20 was the alleged misrepresentation to which “all class members were exposed.” *See* Class Cert.
21 Order at 10. Consistent with that observation, the Ninth Circuit found a ““common course of
22 conduct”” sufficient to permit class certification specifically “[g]iven the claimed
23 misrepresentation to be the substitution of people for accounts.” *DZ Rsrv.*, 96 F.4th at 1235. The
24 Ninth Circuit thus explicitly identified the alleged misrepresentation that it found sufficient to
25 support class certification. Plaintiffs label this issue as “disputed” but offer no explanation as to
26 why the Ninth Circuit’s decision—affirming this Court’s decision—does not definitively resolve
27 the issue.

28 Meta is entitled to describe in an opening statement the alleged classwide misrepresentation

1 in this case in the same way the Ninth Circuit did. Any other rule would severely prejudice Meta’s
 2 ability to present its case to the jury. Meta cannot preview its evidence to the jury or question
 3 witnesses without describing the alleged misrepresentation that the evidence is meant to disprove.
 4 And both Meta and Plaintiffs are bound by the Ninth Circuit’s description of that
 5 misrepresentation. Plaintiffs’ cited case does not say otherwise—there, the court excluded
 6 references to self-defense because self-defense was legally irrelevant under the criminal statute at
 7 issue. *United States v. Palumbo*, 2010 WL 4683539, at *2 (D. Mont. Nov. 12, 2010). But the
 8 alleged misrepresentation on which Plaintiffs’ class claims are based is obviously relevant, and
 9 Plaintiffs apparently plan to characterize the alleged misrepresentation in their own arguments. To
 10 the extent Plaintiffs disagree with Meta’s description of that misrepresentation, the answer is for
 11 Plaintiffs to make their own opening statement, present their own evidence, and cross-examine
 12 witnesses—not to impose a one-sided restriction on Meta’s arguments.

13 Plaintiffs have no authority for the bizarre proposition that Meta cannot identify for the
 14 jury the representation the Ninth Circuit allowed to proceed on a classwide basis when it affirmed
 15 this Court’s decision. Rather, they cite cases for the general proposition that confusing evidence
 16 may be excluded. But their cases have no application here. In *Idaho Golf Partners, Inc. v.*
 17 *TimberStone Mgmt., LLC*, 2016 WL 5340302, at *3 (D. Idaho Sept. 21, 2016), the court excluded
 18 evidence of an agency proceeding that had “minimal” relevance because it would “needlessly
 19 complicate trial” with discussion of “what legal standards apply” to such agency proceedings. In
 20 *Nat’l Prods., Inc. v. Arkon Res., Inc.*, 2019 WL 12536044, at *8 (C.D. Cal. Mar. 25, 2019), the
 21 court likewise excluded certain argument and evidence about the purchase of a product because it
 22 risked “jury confusion about what is required to show willful patent infringement.” Neither case
 23 remotely supports the notion that Meta should be prohibited from describing the alleged
 24 misrepresentation at issue in this case as the one the Ninth Circuit articulated: Meta’s alleged
 25 “substitution of people for accounts.” *DZ Rsrv.*, 96 F.4th at 1235. If anything, it is Plaintiffs who
 26 should be prohibited from characterizing the misrepresentation in a way the Ninth Circuit
 27 expressly rejected. At minimum, if Plaintiffs were right that “disputed” issues should be excluded,
 28 the restriction would need to apply equally to the parties, so that *neither* side could characterize

1 the alleged misrepresentation—a peculiar and unhelpful outcome that is only likely to sow jury
2 confusion in a case where jurors will have to decide whether Meta made fraudulent
3 misrepresentations.

4 For these reasons, Plaintiffs’ motion should be denied.

5 Dated: September 2, 2025

Respectfully submitted,

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